

**FACTFINDING  
RECOMMENDATION**

**FOR**

**THE CITY OF BILLINGS**

**AND**

**LOCAL 521  
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**

**RECEIVED**

**MAR 22 2002**  
**Standards Bureau**

**Dated: February 5, 2002**

**Shelly C. Shapiro  
Factfinder**

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## EXHIBITS

|             |   |
|-------------|---|
| U. Ex. A.   | Union E-Mail to Factfinder  |
| City Ex. B. | City Letter to Factfinder   |
| City Ex. C. | Employee's Wages/Insurance (1996-2003)                                      |
| City Ex. D. | Cost of 3.9% COLA   |
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| U. Ex. 8.   | City's 2 <sup>nd</sup> Offer (6/27/2001)                                    |
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| U. Ex. 10.  | City's 3 <sup>rd</sup> Offer (8/8/2001)                                     |
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| U. Ex. 12.  | Letter to Non-Contracted Employees 3.9% Salary Increase                     |
| U. Ex. 13.  | Letter from State Dept. of Labor on CPI                                     |
| U. Ex. 14.  | Letter from Billings Area Chamber of Commerce on CPI                        |
| U. Ex. 15.  | US Dept. of Labor, Bureau of Labor Statistics (CPI for July 2000-June 2001) |
| U. Ex. 16.  | CBA Article VII.B.1.a.  |
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| U. Ex. 19.  | City Approved Budget  |
| U. Ex. 20.  | Budget, Pages 11 and 12   |
| U. Ex. 21.  | Firefighter Wages   |
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| U. Ex. 26.  | COLA Factors at 3.9% and 1.58%  |
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| U. Ex. 28.  | Local 521's Handwritten Wage Summary  |

## **Procedural Matters**

This factfinding was initiated by the Local 521 International Association of Fire Fighters ("Association") and the City of Billings ("City") pursuant to the Montana Code Annotated 39-31-309. The Factfinder was selected through mutual consent pursuant to the procedures provided in the Montana statutes.

A hearing was held in Billings, Montana on January 9, 2002. Association President Jamie Mertz and Officer at Large Bob Golubski represented the Association. The City was represented by Steven J. Lehman of Crowley, Haughey, Hanson, Toole & Dietrich, P.L.L.P., Billings, Montana. Following the evidentiary hearing, the parties elected to make closing statements in lieu of posthearing briefs.

## **Factual Information**

### **Bargaining History**

The Association and City have been parties to various collective bargaining agreements since the 1960s. They are currently party to a collective bargaining agreement effective July 1, 1999 to June 30, 2002 ("the CBA"). The Association represents Billings' firefighters ("the Firefighters"). The CBA provides, in relevant part:

The Salary Schedule for fiscal year 1999-2000 represents a 3% COLA, the salary schedule for fiscal year 2000-2001 represents a 3 % COLA and both parties agree to a wage opener for fiscal year 2001-2002.....

....

The 2001-2002 base wages shall be negotiated with a wage opener between the City and the ASSOCIATION and shall become effective 7-1-01.

CBA at Article VI, B, 1 (a) and (b) (see U. Exs. 1, 5 and 6(a)). It also provides:

For fiscal year 2001-2002, the base wage for each employee shall be negotiated in a wage opener between the City and the ASSOCIATION. Either party can request wage opener negotiations by written request mailed prior to April 1, 2001.

CBA at Article XI (see U. Exs. 1 and 2).



On March 15, 2001, the Association requested a wage opener for fiscal year 2001-02 (the City's fiscal year is from July 1 to June 30) ("FY02").<sup>1</sup> On or about June 12, 2001, the Association made a proposal on a number of issues related to wages (standby, longevity, special assignment and special certification pay); it also proposed a base wage increase of 8 %. (See U. Ex. 6). The City proposed a .5% base wage increase. (U. Ex. 4). On June 21, the City argued that only base wage was open for negotiation; the Association withdrew its proposals on matters other than a base wage increase. In additional bargaining sessions, including a meeting with a state mediator, the parties were unable to agree to a base wage adjustment. (U. Exs. 7, 8, 9 & 10).

On September 14, 2001, the parties held their last bargaining session. The City proposed a 1.5% COLA and the Association proposed a 4.75% COLA. (See U. Exs. A, 11). The parties agreed to move the issue to factfinding.<sup>2</sup>

### **History of Wage Rates and Health Coverage**

The City has four groups of employees: the Firefighters, those represented by the Montana Public Employees Association Billings Police Unit ("Police"); those represented by Teamsters-Local 190 ("Teamsters") and the management (not union represented) employees ("Management"). (See generally City Ex. C).

From at least the 1996-97 budget year until the 1999-2000 budget year, each of the four groups received the same annual COLA increase, the same City contribution for medical insurance and fully paid health coverage. (Id.). In budget year 2000-01, all were the same except the Police unit went to a "market adjustment" for wages; this is the wage adjustment mechanism for the Police through the 2002-03 budget year. (Id., City Ex. I). In the five fiscal years reported (1996-97 through 2000-01), all employees received a 3% annual COLA increase (except, as noted, the Police in 2000-01). (City Ex. C).

The CBA does not specify the base wages for FY02, effective July 1, 2001. An increase of 3.9% was effective in FY02 for the Teamsters and Management. (Id.) The

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<sup>1</sup> In addition to the Exhibits, information in this Factfinding Recommendation is based on the statements of the City and Association representatives identified above, Association spokespersons Ron Martin and Brian Corneliusen, City Controller Pat Webber, City Human Resources Manager Laura Marshall and City employee Karla Stanton.

Police wages were subject to the agreed "market adjustment". (Id. See also City Ex. I). The record does not contain information about the impact that "market adjustment" had on wages for fiscal year 2000-01 or is anticipated to have for FY02 or 2002-03.

Through fiscal year 2000-01, City employees did not pay for health coverage. The City paid the following monthly into its self insured health care fund ("the fund") for each employee:

|         |       |
|---------|-------|
| 1996-97 | \$237 |
| 1997-98 | \$265 |
| 1998-99 | \$290 |
| 1999-00 | \$300 |
| 2000-01 | \$385 |

(City Ex. C). The amount paid was based on a "composite". For FY02, the City budgeted \$435 per Police, Teamster and Management employee and \$485 per Firefighter as its contribution to the fund. (Id., City Ex. H ).

For several years, the City was concerned about the fund's financial viability. In 1997, the City convened a health insurance committee that included representatives from all four employee groups. Ultimately, the committee determined, among other things, that employees needed to contribute to health coverage costs.

Beginning July 1, 2001, Police, Teamster and Management employees started contributing to the cost of their health coverage; employees choose between three plans and determined the number of their dependants to cover. (City Ex. F). An employee's contribution ("premium") ranges from a credit of \$40 per month (Plan C coverage for the employee only) to \$115.29 per month (for Plan A coverage for the employee plus family). (Id.). The premium payment is provided for in the City's agreement with the Teamster's for July 1, 2001 through June 30, 2004. (City Ex. I (excerpt only)). It is also provided for, effective July 1, 2001, in the City's agreement with the Police for July 1, 2000- June 30, 2003. (Id.) The employee payment of premiums was implemented by the City for Management effective July 1, 2001. (U. Ex. 12).

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<sup>2</sup> The Montana Code does not specify the circumstances to be considered in a factfinding. The Montana Code does state the circumstances relevant to interest arbitration between firefighters and public employers. MCA 39-34-103 (5).



In early 2001, the City made a proposal, as provided in the CBA, to the Association for their members to pay the same premiums in FY02, the last year of the CBA term. The Association membership voted against doing so. The record did not include the City's proposal or any other information about those discussions.

### **Issue for Factfinding**

Prior to the hearing, each party provided a written statement of the issue to be submitted to factfinding. The Association submitted a statement on November 7, 2001 that provided a summary of the negotiations and the final COLA proposals. (U. Ex. A). The City submitted a statement on November 16, 2001. (City. Ex. B (also U. Ex. 17)). It said: "The City...agrees with the Local 521 IAFF letter of November 7, 2001, that the only issue before the fact finder is for the fact finder to give her opinion as to what the cost of living increase ("COLA") for the IAFF members employed by the City of Billings should be, between July 1, 2001, and June 30, 2002." (City Ex. B). At the outset of the factfinding proceeding, the parties confirmed that the only issue was the COLA increase.

### **The Parties' Positions**

#### **The Association**

The Association argues that it should receive a 4.75% base wage increase for FY02. It relies on two sources to support this proposal.

- The Consumer Price Index for Urban Wage Earners (the CPI-W) for other goods and services in the average U.S. city (October 2001) increased 5.1%. (U. Ex. 14, Page 3). This percentage should be multiplied by 96.3%, the Cost of Living Index for miscellaneous good and services for Billings compared to the national cost of living (second quarter 2001). (U. Ex. 14, p. 2. See also U. Exs. 13 and 14, p.1). As  $5.1 \times 96.3 = 4.91$ , **4.91%** is the cost of living increase for Billings.

- The Bureau of Labor Statistics Data provides that CPI for Urban Wage Earners and Clerical Workers averaged **4.1%** for the twelve months preceding July 1, 2001. (U. Ex. 15).

The Association's proposed increase, 4.75%, is the average of the 4.91% and 4.1%.<sup>3</sup>

The City's position that a 1.58% COLA is appropriate for FY02 should be rejected. It is based on decreasing the 3.9% COLA because the Association members,

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<sup>3</sup> The Association also argued that the City's own FY02 budget ("City Budget") figures, at page 21 reflect a 7.3% rate of inflation for 2001-02. (U. Ex. 15B). The City responded that the 7.3% is not the inflation rate but the increase in Billings' real property, personal property and motor vehicle taxable value.

unlike other City employees, are not required by the CBA to pay premiums in FY02. The Union was willing to open up the issues of wages and insurance in early 2001; the City refused, and claimed the issues were separate.

When the Union attempted to open up wage related issues in conjunction with the 2001 COLA opener, the City said that nothing was open but the COLA adjustment; the City's COLA proposal here, however, opens up payment for health insurance which was settled for the CBA term.<sup>4</sup> When the CBA was negotiated, the City and Association knew that there were major concerns about health care costs, but the CBA provides for fully paid health insurance during its term. ( CBA at Art. VII (B) (1) (a), U. Ex. 16).

Even if the City's position that the COLA is properly offset by the premiums not paid by the Firefighters is accepted, the City's Budget numbers and assumptions in calculating its COLA offer to the Association are flawed in many respects and, therefore, unreliable. These flaws include City Budget inconsistencies in the cost of increased contributions for Firefighters to the fund (See U. Ex. 20 at pages 1 and 2), as well as the amount of increased overall City contributions to the fund (Id.; U. Exs. 22 & 23). The City's projected FY02 Firefighter base wages (Compare City Ex. E with U. Ex. 21), as well as its census of FTE Firefighters (See U. Ex. 24) are inaccurate. The City had initially assumed a 1.67% Firefighter COLA and later lowered it to 1.58%. (See U. Ex. 25, Page 8). Although the City claimed it was not reducing the Firefighter COLA to cover its \$50 increased payment to the fund, the City Budget and its presentation to the City Council indicated it was doing so. (See U. Ex. 20, pg. 2, U. Ex. 25, pg. 8 and U. Ex. 28).

Each of the City's contracts with its three unions is different and benefit packages are not necessarily equal. (See U. Ex. 18). Insurance changes for other units do not change the City's CBA obligations to the Association.

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<sup>4</sup> The Association notes that CBA at Article XI, U. Ex. 2 provides.:

The parties acknowledge that during the negotiations that resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter ....Therefore, Employer and Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and releases the other from the obligation to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement.



## The City

The City's employees have historically had the same annual base wage increase and health coverage fully paid for by the City. (City Ex. C). As of July 1, 2001, the other groups of City employees started paying a portion of their health insurance costs and received a 3.9 % COLA increase for FY02. The COLA increase, historically set in reference to the National CPI-U was, for FY02, set in reference to the West Region's CPI-U at 3.9% (the National was 3.4%). The use of the West Region was recommended by the City Administrator whose own salary adjustment uses it, and was financially feasible due to the employees' payment of premiums. (See City Ex. G). Based on the Association's refusal to participate in the health insurance changes, the City determined that the Association should receive a 1.58% increase in order to maintain the historical parity with other City employees.<sup>5</sup>

The City fairly determined the proposed 1.58% COLA increase. The City determined that a 3.9% COLA increase for Firefighters in FY02 would cost \$210,514. (City Ex. D). It then determined that the Firefighters would receive \$124,800 in the form of **not** contributing to health insurance costs. (City Ex. E) This number was calculated by multiplying 104 (the number of Firefighters) times 12 months times \$100; the City used \$100 although a family would actually pay \$115.29 for Plan A coverage. (Id. City Ex. F). Firefighters are in Plan A (as opposed to lesser coverage plans) and "most" are families. If the \$124,800 is subtracted from the \$210,514, the remaining \$85,285 equals a 1.58% COLA increase. (City Ex. E).

The CBA provides that the City contribute \$300 a month per Firefighter for health insurance during its term. (CBA at Art. VII (b) (1) (a)). The City increased this to \$385 in 2000, \$435 in 2001 and \$485 for FY02. Contributions for all City employees were at the same level until July 1, 2001; since then, the City's contribution per Firefighter has been \$50 per month greater than its contributions for other employees.

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<sup>5</sup> Although it stated that its FY02 budget has a \$1.1 million deficit, the City did not take the position that it did not have the financial ability to pay the Firefighters a COLA in excess of that proposed. In fact, the issue was not mentioned until the Association introduced Montana Code Annotated 7-33-4130 (U. Ex. 27), and argued that the City had the authority to levy to pay for Firefighter health insurance. The City denied its ability to levy absent a voter approved initiative.



The 1.58% COLA actually gives Firefighters a better financial package than City employees who pay premiums. Under the City's offer, for example, a Firefighter who had a 2000-01 base wage of \$15 per hour, would receive more (\$17.257 compared to \$16.91) than a Teamster with the same base wage. This is based on their respective FY02 COLA increase (3.9% versus 1.58%) and City made contributions to the fund (\$435 versus \$485 per month), and the Teamster's premium payment (\$115 per month). (City Ex. J).

The City's method for determining the 1.58% COLA is sound and retains the history of treating employees' wage adjustment/health insurance equally. Any alleged "inconsistencies" were clarified by the City controller as either clerical errors or the result of changes between the initial budgeting in winter 2000-01 and the spring/ summer 2001 wage opener negotiations.

The City is not required to implement any particular COLA, and the 1.58% proposed is fair.

### **Discussion and Recommendation**

#### **Discussion**

The parties' CBA has provided for fully paid health coverage and a base wage increase of 3 % COLA for years. The parties agreed that the CBA's FY02 "wage opener" was limited to a determination of, in the words of the City, "what the cost of living increase should be" for FY02. (U. Ex. 17). The City says it should be 1.58% (the 3.9% other City employees receive decreased by \$100 per month for non payment of premiums). The Association says it should be 4.75%, one method of determining the COLA for FY02, and certainly no less than the 3.9% other City employees receive.

The Association's proposed 4.75% COLA is unfounded. Its method of determining the COLA is explained above. (See also U. Exs. 14 and 15). The City objects to the foundation for that method. Even if accepted as a method for determining a COLA, the proposed method has never been utilized by the parties in the past. The City stated that the COLA adjustments for its employees, for at least the five preceding years, have been made in "reference to" the National CPI-U in December of the year proceeding the July implementation of the COLA adjustment. Although the "reference to" was not explained and the 3% COLA utilized has not precisely tracked the CPI-U during these

years, the Union did not challenge that statement. The Association offered no rational for utilizing a different methodology resulting in a COLA significantly higher than the CPI-U for 2000 (4.75% versus 3.4% (City Ex. G, page 1) nor any basis for a COLA increase greater than the other City employees received in FY02—3.9%.

Other than the Association's argument for a 4.75% COLA, both of the parties' positions are rooted in the historic equality of the four employee groups regarding certain terms and conditions of employment. The City says that fairness dictates that the Association's COLA should be the same as other City employees **decreased**, however, because other City's employees pay premiums while Association members do not. The Union argues that it should, at a minimum, receive the 3.9% COLA effective for the Teamsters and Management and that, as its CBA provides for fully paid health insurance, its non-payment of premiums is immaterial. There are weaknesses in both of these positions.

The City's position relies on maintaining the practice of equal base wage adjustments and health insurance provisions. This practice, however, has changed. As of July 2000, the Police agreement no longer utilizes the COLA adjustment; rather, there is a "market adjustment" for wages. (City Ex. C). Whether the "market adjustment" means Police wage increases are above or below the other City employee's COLA increase was not reflected in the record and is irrelevant. What is relevant is that all City employees no longer receive the same annual base wage adjustments. The City's rational that the COLA it proposes is necessary to maintain equality in all City employees' wage increase/health insurance package is not persuasive given this change.

In addition to concerns about the City's fundamental rational for its proposal, the City's charging each Firefighter \$100 per month through a COLA decrease is not as fair as it initially appears. ( See City Ex. D) . According to the City, virtually all Firefighters have Plan A and "most" have family coverage; this coverage costs other employees \$115 per month. City employees' premiums, however, vary from a credit of \$40 per month to \$115.29 per month. (City Ex. F) Certainly some Firefighters, even if all are on Plan A, insure only themselves (costing other employees \$36.63) or themselves and their child(ren) (costing \$67.42). At \$100 per month, the City, through the COLA adjustment,



is charging every such Firefighter significantly more than other City employees for the same coverage. For that unspecified number, the result is not fair.

The City supports the fairness of the \$100 charge by noting that the actual health coverage cost difference between the Firefighters and other City employees is \$165 per month per employee. This is the nonpayment of the premium (\$115) plus the City's \$50 extra payment to the fund. (See e.g. City Ex. J). The amount the City transfers to the fund is based on a "composite"; the "composite" for all City employees was \$385 last year, it is \$435 for other City employees and \$485 for Firefighters for FY02. The record does not explain the methodology of determining the "composite", why/ how a decision is made to have a separate Association composite rather than a "composite" of all City employees or for all City employees on Plan A or for all employees covering families on Plan A. The internal transfers between the City and its fund, as well as the accounting decision to charge more internally for Firefighters than other City employees, may be entirely appropriate. This record, however, is insufficient to determine whether this \$50 additional City payment is a proper factor in considering the fairness of the City's proposal.

These concerns about the City's proposal do not reflect an agreement with the Association's claim that the City's proposal was based on inaccuracies and/or an inconsistent City Budget. This Factfinder has carefully considered each of the Association's allegations, but does not agree that the numbers are "unreliable". The City methodology was rational and calculated in a good faith effort to determine what Firefighter COLA increase plus \$100 per Firefighter per month would equal 3.9 % of the base wages for the entire Association unit. As stated above, however, this Factfinder does not agree that the Association's COLA should be determined in that manner.

By focusing solely on the historic uniformity between the City's four employee groups, the City has ignored the historic practice of these parties: an annual COLA adjustment to base wages related to the CPI-U and fully paid health coverage. Although other City employees now pay premiums, the Firefighters have not agreed to do so during the last year of the CBA term. The issue before the Factfinder is the COLA and a COLA that is calculated in reference to the costs of the coverage provided in the CBA provision for "fully paid" health insurance is inconsistent with the parties' practice.

The Association's position here also seeks to maintain a selected portion of the parties' bargaining history. The Association wants the same COLA as other City employees (if not higher) despite changes in other aspects of the historic uniformity. The Police now have a different wage adjustment mechanism and, more significantly, Police, Teamster and Management all pay premiums. This undercuts any Association assumption that, based on the COLA increase uniformity, it is entitled to the same COLA as employees paying premiums.

Although not agreeing with the City's attempt to reach an approximate mathematical equality here, the City clearly has bona fide personnel and budgetary reasons for not providing a 3.9% COLA for Firefighters. The City's willingness and ability to utilize a 3.9% COLA, its highest COLA and its first utilizing the West Region's CPI-U in at least six years, for Teamster and Management employees was based in significant part on those employees' payment of premiums. In announcing the 3.9% COLA to Management, the City Administrator stated:

I am pleased to inform you that the 3.9% increase is effective July 1, 2001. This increase is intended to help maintain your relative purchasing power and ease the transition towards increased cost sharing required to maintain a viable and sustainable health insurance program for all City employees.

(U. Ex. 12).

Neither the past uniformity between the COLA of each employee group, its bargaining history with the City, nor any law entitle the Association to the same COLA as the other employee groups for FY02. A 3% COLA—rather than the 3.9% increase effective for the Management and Teamster employees—takes into account the undisputed fact that the Firefighters living costs have **not** been increased like other City employees because Firefighters are not “cost sharing” health coverage expenses with the City. It is the same increase the parties agreed to for at least the last five years during which the City was providing fully paid health coverage. A 3% COLA in FY02 will be only the second time in the last six years that the Association's COLA would be below the National CPI-U. For FY02, the National CPI-U is 3.4%; in 1997-98, the COLA was 3% and the National CPI-U was 3.3%. (City Ex. C and G). It retains, however, the parties' historic “reference to” the National CPI-U.



**Recommendation**

It is the recommendation of the Factfinder that the COLA for the Association be 3% for FY02. This is the same COLA the parties have utilized for the last five years, including the first two years of the CBA term, and neither party demonstrated that circumstances support a different COLA during FY02.

The foregoing Recommendation is less than the Association sought but more than the City offered. The Factfinder endeavored to consider the concerns and rights of both parties. It is offered in the hope that it will either prove acceptable or stimulate ideas as to other ways of mutually resolving the issue.

Dated: February 5, 2002.

/s/  
Shelly C. Shapiro